

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
SARAH J. HEFFLEY, JUDGE

DIVISION II

CA 06-1244

May 30, 2007

HARRY KIM, KYUNG AN KIM, and
ROLLING HILLS PROPERTIES, LLC
APPELLANTS

APPEAL FROM THE PULASKI COUNTY
CIRCUIT COURT
[NO. CV 05-6109]

V.

HONORABLE BARRY SIMS,
JUDGE

BILL LEGGETT and MARGARET
LEGGETT

AFFIRMED

APPELLEES

Appellants, Harry Kim and Kyung An Kim, and appellees, Bill and Margaret Leggett, were involved in a real estate transaction that closed on June 18, 2004. Problems later developed with the property, and appellants, the buyers, sued appellees, the sellers, on claims of breach of contract, fraudulent concealment, and negligence. The trial court granted appellees' motion for summary judgment on July 7, 2006. Appellants now appeal the order for summary judgment entered against them.

In April 2004, appellant Harry Kim saw an advertisement in the newspaper advertising the sale of a trailer park on Bowman Road. Appellant inquired about the property and spoke to appellee Bill Leggett, the owner of the property. After utilizing the assistance of a business

broker and an attorney, appellant drafted an “Offer and Acceptance” agreement, and on April 21, 2004, the parties signed the agreement in which appellees agreed to sell to appellants the Rolling Hills Mobile Home Park for a purchase price of \$1.6 million. The purchase price included the “real estate, fixtures, equipment, inventory, trade names, trademarks, leases, rental agreements, and other intangible assets” of the business. The agreement contained a paragraph that read as follows: “Seller warrants that the premises will pass inspections necessary to conduct such business at the time physical possession is delivered to purchaser and all equipment will be in working order.” At the time of the sale, the property contained 115 mobile home lots, and there were rental tenants present on the property. All the tenants shared common natural gas, water, and sewer services, which were billed by the park owner to the tenants in a pro-rata manner.

The transaction closed on June 18, 2004, and appellants began operating the trailer park as a legal entity known as Rolling Hills Properties, LLC. On December 28, 2004, approximately six months after the closing, the gas-service line failed, and appellant Harry Kim contacted both a plumber and appellee Bill Leggett. Appellee instructed appellant on how to patch the leak with supplies he had used in the past and left on site in a tool shed. The plumber advised appellant that the gas line could not legally be repaired as appellee had suggested and that the entire gas-line system throughout the twenty-one-acre property needed to be replaced. The gas company then shut off the gas main on the property.

The City of Little Rock Code Enforcement Division then inspected the property and

found that both the gas service and the electric meter loops were in violation of city code. The city prosecuted appellants for the code violations and requested an injunction prohibiting the continuation of the operation of the trailer park unless appellants corrected the deficiencies or provided alternative sources of power for the residents of the mobile home park. The city also advised appellants that the park was only zoned for ninety-five mobile home lots, and twenty lots would have to be closed. Appellants ultimately spent almost \$600,000 to bring the park into compliance and defend themselves in the action brought by the city.

Appellants later discovered that there was a long history of gas leaks at the park, that appellee had been patching gas-line leaks himself for years, and that appellees had received a letter report from the Arkansas Public Service Commission, dated April 26, 2004, which outlined the results of its inspection of the gas line and showed multiple gas-line leaks, some of which required repairs within five months of discovery and were required to be repaired by a licensed plumber. Appellants, as individuals and in their corporate capacity as Rolling Hills Properties, LLC, filed suit against appellees on April 21, 2005, alleging breach of contract and fraudulent concealment. Appellants later amended their complaint to include an allegation of negligence. Appellees filed a motion for summary judgment, and a hearing on the matter was held on June 30, 2006. After finding that “the sellers did what they were supposed to do and there’s no material question of fact,” the trial court granted appellees’ motion for summary judgment. Appellants then filed a timely appeal with this court.

Our standard of review for summary-judgment cases is well-settled:

Summary judgment is to be granted by a trial court only when it is clear that there are no genuine issues of material fact to be litigated, and the party is entitled to judgment as a matter of law. Once the moving party has established a prima facie entitlement to summary judgment, the opposing party must meet proof with proof and demonstrate the existence of a material issue of fact. On appellate review, we determine if summary judgment was appropriate based on whether the evidentiary items presented by the moving party in support of its motion leave a material fact unanswered. This court views evidence in a light most favorable to the party against whom the motion was filed, resolving all doubts and inferences against the moving party. Our review is not limited to the pleadings, as we also focus on the affidavits and other documents filed by the parties. After reviewing undisputed facts, summary judgment should be denied if, under the evidence, reasonable persons might reach different conclusions from those undisputed facts.

Little v. Jonesboro Country Club, 92 Ark. App. 214, 216, 212 S.W.3d 57, 59 (2005) (quoting *Rice v. Tanner*, 363 Ark. 79, 82, 210 S.W.3d 860, 863 (2005)) (citations omitted).

On appeal, appellants' argument focuses primarily on the alleged duty of the appellees to disclose the business records concerning the gas-line reports for the property, especially the report appellees received on April 26, 2004, showing fifteen gas leaks. Appellants also argue that appellees should have disclosed the prior repairs made to the property. We note that the basis of this argument is not clear, although it presumably stems from the breach of contract argued below. In any case, appellants' argument must fail because they have failed to demonstrate the existence of any duty to disclose such facts under the terms of the contract between the parties.

Appellants cite two cases to support their argument: *Beatty v. Haggard*, 87 Ark. App. 75, 184 S.W.3d 479 (2004), and *Riley v. Hoisington*, 80 Ark. App. 346, 96 S.W.3d 743

(2003). However, both of these cases deal with misrepresentations made by the owner/seller in an owner's disclosure statement, and in both cases the court found that type of misrepresentation constituted constructive fraud. These cases are of little help to appellants in the instant case, considering (1) appellants did not raise the issue of constructive fraud below, and therefore are precluded from raising the argument for the first time on appeal, *Hackelton v. Malloy*, 364 Ark. 469, ___ S.W.3d ___ (2006); and (2) there was no owner disclosure statement in the present case that contained misrepresentations and that appellants relied on to their detriment. Overall, appellants have failed to present an argument that demonstrates any issue of material fact that would preclude judgment for appellees as a matter of law. Accordingly, we affirm.

Affirmed.

MARSHALL and VAUGHT, JJ., agree.